

**DIALOGUE FOR DETENTION HEARING**  
**I.C. 31-37-6**

1. COURT: Let the record show that this is a detention hearing being held this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_\_ o'clock \_\_.M, in Case No. \_\_\_\_\_, entitled "In the Matter of \_\_\_\_\_, a child alleged to be a delinquent child."

**PRESENT ARE:** Identify all the parties by name and position or relationship, including parent/guardian/custodian (hereinafter referred to as parent). Further, identify all others who are present in the courtroom, excusing those who the court finds should not be present.

**NOTE: A probation officer should always be present at the hearing, and should make every effort to prepare an intake report beforehand.**

**NOTE: Detention of a juvenile in a secured facility prior to a hearing on the merits should be used sparingly. See: In the Matter of L.J.M. 473 N.E.2d 637 (Ind. App. 1985).**

**NOTE: Often it is possible to combine the detention hearing and the initial hearing. If the juvenile petition is filed at the time of the detention hearing, it is recommended that both proceedings be merged.**

**NOTE: The Benchbook Committee recommends that an attorney be present for this hearing, if available; court-appointed if there is no retained attorney. Some jurisdictions routinely appoint counsel at the time the child is taken into detention, to enable child and parent to have counsel available before the detention hearing and during the detention hearing.**

2. COURT: (to State) Has the juvenile and his/her parent been provided with the Affidavit of Probable Cause and/or the intake report? (See Form D-1.05)

Please state for the record the date of birth for the juvenile and the date and time he/she was taken into custody.

3. COURT: Let the record reflect this hearing is being timely held. IC 31-37-6-2 requires a detention hearing be held not later than 48 hours, excluding Saturdays, Sundays, and legal holidays after a child is taken into custody. We are here today to determine several things:

**First**, to determine probable cause for believing that the child is a delinquent child. A delinquent child is a person who, while less than eighteen (18) years of age, committed an act that would be an offense if committed by an adult, or committed a status offense and needs the care, treatment or rehabilitation that he is not receiving and is unlikely to receive without the coercive intervention of the court. Status offenses are: runaway, truancy, curfew violation, habitual disobedience or certain firework offenses.

**Second**, we are here to determine whether the child should be released from detention. To continue the child's detention, I must make specific findings:

- a. that the child is unlikely to appear for subsequent proceedings,
- b. detention is essential to protect the child or the community.
- c. the parent cannot be located or is unable or unwilling to take custody of the child, **OR**
- d. the child has a reasonable basis for requesting that he not be released.

**Third**, if I determine that the child should be continued in detention, I must then determine where the child should be held, and what responsibilities, including financial reimbursement, the parent might have. (If detained, specific findings must be entered of record) Furthermore, if the child is not continued in detention, what are the conditions of release.

**NOTE: Specific findings as to detention are not necessary if the child is "detained" at the home of the parent or released subject to terms of home detention, electronic monitoring, curfew restriction, protective order, or no contact order.**

4. COURT: (to child) are you under the influence of any alcohol or drug? Do you and do your parents understand why you are here? Do you have any questions at this time?

5. COURT: (to child and parent) Are you currently being treated for any mental or emotional disability?

6. COURT: You are entitled to be represented by an attorney. You may hire your own attorney, or, if you request, the court will appoint one for you. If an attorney is appointed, your parents may be obligated to repay a portion of that expense back to the county if you are adjudicated as a delinquent. You also have the right:

- a. not to testify against yourself at this hearing,
- b. to remain silent, anything you say could be used against you in later hearings.

**NOTE: I.C. 31-32-5-1 also states that a child cannot waive his right to an attorney without the meaningful consultation and consent of the parent. Should the parent have a conflict of interest with his/her child (e.g. they are the alleged victim) a guardian-ad-litem should be appointed.**

7. COURT: (to child) Have you consulted with your parent as to a waiver of counsel?

8. COURT: (to child and parent) Do you understand these rights? If so, do you wish me to appoint an attorney, do you wish to retain your own, or do you wish to waive counsel?

**NOTE: If they are requesting counsel, appoint one at this time (I.C. 31-32-4-2). Assure them that counsel will be with them at each subsequent hearing. Regardless of what their decision is, the Court must proceed to determine whether or not continued detention is**

**warranted.**

9. COURT: (to the State) Please inform the court and the parties of your probable cause either by summation or testimony.

10. COURT: (to the State) What prior contact has the child had with the juvenile justice system and what were the dispositions of those contacts?

11. COURT: (to the State) What are your recommendations to the Court concerning whether the child should be released or detained, the type of detention, if he is to be detained, and any other orders that the court should make at this time?

12. COURT: (to the parent) What suggestions can you give the Court concerning detention at this time?

**NOTE: The parent needs to be made aware that the cost of detention, or at least a portion of that cost, could be assessed against them, based on their financial situation.**

I.C. 31-40-1-3

13. COURT: (to child and his/her attorney when present) do you wish to say anything at this time concerning the issue of detention only?

**NOTE: If the court finds that further detention is not necessary at this time, the court can be guided by I.C. 31-37-6-6, regarding terms of release.**

**Should the court find that the necessary factors exist for detention - proceed as follows:**

14. COURT: The Court finds that probable cause exists that the child committed a delinquent act (that would be a crime if committed by an adult or is a status offense). The Court further finds that detention of the child is necessary because (state the factual basis and one of the following conclusions:

- a. that the child is unlikely to appear for subsequent proceedings,
- b. detention is essential to protect the child or the community,
- c. the parent cannot be located or is unable or unwilling to take custody of child,
- d. the child has a reasonable basis for requesting that he not be released.

15. COURT: The Court further finds that continuation in the home would be contrary to the health, safety, and welfare of the child because:

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Reasonable efforts have been made/or an emergency exists such that reasonable efforts could not be made to prevent placement \_\_\_\_\_.

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Approved: 8.08  
Revised:

D-8.01

The Court hereby incorporates by reference all the reports and evidence received or admitted at this hearing.